

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RINELLA BINNS-HARTY-BOLT,

Plaintiff,

-against-

DENIS R. MCDONOUGH, SECRETARY,
DEPARTMENT OF VETERANS AFFAIRS,

Defendant.

21-CV-7276 (PAE)

ORDER OF SERVICE

PAUL A. ENGELMAYER, United States District Judge:

Plaintiff brings this *pro se* action under Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. §§ 2000e to 2000e-17, and 42 U.S.C. § 1981a, alleging that her employer discriminated against her based on her race and age.¹ The Court construes the third amended complaint as also asserting claims under the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634. By order dated September 20, 2021, the Court granted Plaintiff’s request to proceed *in forma pauperis* (IFP).

DISCUSSION

Because Plaintiff has been granted permission to proceed IFP, Plaintiff is entitled to rely on the Court and the U.S. Marshals Service to effect service. *Walker v. Schult*, 717 F.3d. 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process . . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)). Although Rule 4(m) of the Federal

¹ Plaintiff filed the original complaint in this action on August 27, 2021. On September 21, 2021, Plaintiff filed an amended complaint, and on October 18, 2021, she filed a second amended complaint. By order dated October 18, 2021, Chief Judge Laura Taylor Swain directed Plaintiff to file a third amended complaint. Plaintiff filed the third amended complaint, which is the operative pleading, on January 21, 2022.

Rules of Civil Procedure generally requires that the summons and complaint be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served the summons and third amended complaint until the Court reviewed the third amended complaint and ordered that a summons be issued. The Court therefore extends the time to serve until 90 days after the date the summons is issued. If the third amended complaint is not served within that time, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff's responsibility to request an extension of time for service); *see also Murray v. Pataki*, 378 F. App'x 50, 52 (2d Cir. 2010) ("As long as the [plaintiff proceeding IFP] provides the information necessary to identify the defendant, the Marshals' failure to effect service automatically constitutes 'good cause' for an extension of time within the meaning of Rule 4(m).").

To allow Plaintiff to effect service on Defendant Denis McDonough through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form ("USM-285 form") for the defendant. The Clerk of Court is further instructed to (1) mark the box on the USM-285 form labeled "Check for service on U.S.A.," (2) issue a summons and (3) deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon the defendant.

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

CONCLUSION

The Clerk of Court is instructed to (1) issue a summons, (2) complete the USM-285 forms with the address for Denis McDonough, (3) mark the box on the USM-285 forms labeled "Check for service on U.S.A.", and (4) deliver to the U.S. Marshals Service all documents necessary to effect service to the defendant.

The Clerk of Court is further directed to mail a copy of this order to Plaintiff, together with an information package.

SO ORDERED.

Dated: Feb. 3, 2022
New York, New York

Paul A. Engelmayer

PAUL A. ENGELMAYER
United States District Judge
2/3/2022

DEFENDANT AND SERVICE ADDRESS

Denis McDonough
Secretary of the Department of Veterans Affairs
U.S. Department of Veterans Affairs
810 Vermont Avenue NW
Washington, DC 20420